THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10752 of 2007

Dated:05.06.2007

Between:

Smt.Pavani, W/o.S.Krishna.

…Petitioner

and

The Government of A.P., Rep.by its Secretary,
Panchayat Raj Department, Secretariat, Hyderabad, and others.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10752 of 2007

ORDER:

The petitioner was elected as Sarpanch of Gattu Gram Panchayat in August 2006. The District Collector – second respondent herein, initiated action under Section 249(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'), on an allegation that the petitioner dismantled the newly constructed Library Building in the Gram Panchayat causing a loss of Rs.75,000/- to the Government. The petitioner submitted explanation to the show cause notice denying the allegations. The petitioner's case is that on the intervening night of 27/28.08.2006 some miscreants demolished a small portion of the unfinished Library Building, and that she is not at all concerned with the demolition. Be that as it is, the District Collector after considering the explanation, by proceedings No.A3/1508/2006-A1, dated 26.04.2007, passed orders under Section 249(1) of the Act removing the petitioner from the Office of Sarpanch of Gattu Gram Panchayat.

The petitioner preferred an appeal before the Government – first respondent herein. She also filed an application for stay of the proceedings of the District collector. Though the Government took the appeal on file and issued Memo No.10283/Pts.IIA/2007-1, dated 11.05.2007, directing the District Collector to send a report along with the connected record, no orders are passed on the stay application. In the meanwhile, the petitioner was asked to vacate the Office even while the appeal was pending. Therefore, the petitioner again filed the instant Writ Petition assailing the removal order.

Learned Counsel for the petitioner strenuously contends that when the appeal filed by the petitioner under Section 249(7) of the Act and the application for stay are pending before the Government, it was improper and illegal on the part of respondents 2 to 4 to direct the petitioner to vacate the Office and prohibit the petitioner from acting as Sarpanch. He also made submissions with regard to the merits of the case. But, it is not necessary to refer to these submissions, as the appeal is pending.

It is now well settled that when once such statutory remedy by way of appeal/revision is provided, and the aggrieved person has already availed the same, a Writ Petition would not be maintainable simultaneously (see **Bombay Metropolitan Region Development Authority v. Gokak Patel Volkart Ltd.,**[1]**)**.

Therefore, this Court is not inclined to entertain the Writ Petition at this stage. However, this Court observes that unless and until the notification of removal of the petitioner is published in the Gazette, there cannot be any objection for the petitioner to function as Sarpanch of Gattu Gram Panchayat. Further, this Court observes that the Government should necessarily pass orders immediately on the stay application whether or not record or report is sent by the District Collector, especially, having regard to the fact that the petitioner was elected to the Office of the Sarpanch in August 2006.

The Writ Petition is, therefore, disposed of observing that the Government should immediately pass orders on the stay application filed by the petitioner along with the appeal against the orders of the District Collector, dated 26.04.2007, within a period of one week from the date of receipt of a copy of this order. No costs.

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(V.V.S.RAO, J)

05.06.2007

Note: Issue C.C by tomorrow.

B/o.

vs

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[1] (1995) 1 SCC 642